

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

BYRON AVILA,

Plaintiff,

v.

C.A. No. 1:18-cv-00299-WES-LDA

FEDERAL HOUSING FINANCE AGENCY;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; and CIT BANK, N.A. F/K/A
ONEWEST BANK, FSB,

Defendants.

**DEFENDANT FEDERAL NATIONAL MORTGAGE ASSOCIATION'S MOTION TO
SET ASIDE FORECLOSURE AND RESCIND FORECLOSURE DEED**

Defendant, Federal National Mortgage Association ("Fannie Mae"), hereby requests entry of an order setting aside the foreclosure sale of the Plaintiff, Byron Avila's ("Plaintiff"), property located at 72 Memorial Drive, Pawtucket, Rhode Island (the "Property"). Fannie Mae additionally requests this Court rescind the Foreclosure Deed executed on August 29, 2013 and recorded on March 12, 2014 in the Land Evidence Records for the City of Pawtucket at Book 3705, Page 118.

As grounds for this Motion, Fannie Mae states as follows:

I. BRIEF FACTUAL AND PROCEDURAL HISTORY

On November 16, 2005, Plaintiff granted a mortgage on his Property in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for Domestic Bank ("Domestic") and Domestic's successors and assigns, in the original principal amount of \$256,500.00 to secure his payment obligations under a promissory note to Domestic (the "Mortgage"). (*See* Compl. ¶ 43; Mortgage, **Exhibit A**.) The Mortgage was recorded in the City

of Pawtucket Land Evidence Records on November 21, 2005 at Book 2528, Page 188. (Compl. ¶ 43.) On or about October 8, 2010, MERS, as nominee for Domestic, assigned the Mortgage to Fannie Mae pursuant to an Assignment of Mortgage (the “Assignment”) (Assignment, **Exhibit B**.) The Assignment was recorded in the City of Pawtucket Land Evidence Records on October 12, 2010 at Book 3301, Page 125. (*Id.*)

Following notice to Plaintiff, on or about August 1, 2013, Fannie Mae purchased the Property at the duly-scheduled and conducted foreclosure sale and executed a Foreclosure Deed (the “Foreclosure Deed”) on August 29, 2013. (Compl. ¶¶ 46-47; Foreclosure Deed, **Exhibit C**.) The Foreclosure Deed memorializing the sale was recorded in the City of Pawtucket Land Evidence Records on March 12, 2014 at Book 3705, Page 118. (Compl. ¶ 47; **Exhibit C**.) On June 7, 2018, Plaintiff commenced the instant due process and contested foreclosure action against Defendants. Plaintiff previously commenced a similar action challenging the foreclosure proceedings of the Property against Fannie Mae and others in this Court on June 26, 2013, captioned *Byron Avila v. Federal National Mortgage Association et al.*, C.A. No. 1:13-cv-00485-JJM-LDA.

II. DISCUSSION

Fannie Mae seeks an order from this Court setting aside the August 1, 2013 foreclosure sale of the Property and rescinding the Foreclosure Deed executed on August 29, 2013 and recorded in the Property’s chain of title on March 12, 2014 at Book 3705, Page 118. A rescission of the foreclosure is well within the Court’s equitable powers and the discretion of this Court. *See, e.g., Wells Fargo Bank, N.A. v. Jaaskelainen*, 407 B.R. 449, 460-62 (D. Mass. 2009) (explaining rescission is an equitable doctrine and remedy within the distriiction of trial courts and dependent on circumstances of each case); *Turner v. Domestic Inv. & Loan Corp.*, 375 A.2d

956, 959 (R.I. 1977). Accordingly, Fannie Mae respectfully requests this Court exercise its equitable powers to rescind the foreclosure sale.

WHEREFORE, Defendant, Federal Home Loan Mortgage Corporation, respectfully requests the Court grant its Motion to Set Aside Foreclosure and Rescind Foreclosure Deed by endorsement of the Proposed Order, attached hereto as **Exhibit D**, and grant any further relief the Court deems just and proper.

Respectfully submitted,

FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

By Its Attorneys,

/s/ Ethan Z. Tieger

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Dated: December 14, 2018

CERTIFICATE OF SERVICE

I, Ethan Z. Tieger, hereby certify that the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as nonregistered participants on December 14, 2018.

/s/ Ethan Z. Tieger

Ethan Z. Tieger